

REMARKS

In the present Office Action, the Examiner rejected claims 1-35. Claims 1, 3, 5, 12-14, 21, 22, and 26-27 have been amended and claims 2 and 23 have been cancelled. Applicants respectfully request reconsideration and allowance of all pending claims 1, 3-22 and 24-35.

Claim Objections

The Examiner objected to claims 22 and 27 for informalities. Applicants have herein amended claims 22 and 27 to correct the minor informalities, and therefore request reconsideration and withdraw of the claim objections.

35 U.S.C. 112 Rejections

Claims 2-34 stand rejected under 35 U.S.C 112. Applicants herein cancel claims 2 and 23 and amend claims 3, 5, 12, 13, 14, 21, 22, and 26-27 to obviate these claim rejections. Reconsideration and withdrawal of the 35 U.S.C 112 rejections is therefore earnestly solicited.

35 U.S.C. 103 Rejections

Claims 1-7, 12-18, 21-30, and 35 stand rejected under 35 U.S.C. 103 as being unpatentable over Seifert (U.S. Patent No., 5,100,028) in view of Davidson et al. (U.S. Patent No. 6,365,624). Applicants submit that no combination of the references teaches or suggests all the claim limitations and therefore respectfully request reconsideration and withdrawal of this rejection.

Davidson et al. discloses a method of applying (e.g., by spraying) a viscous composition (e.g., having a viscosity between about 5,000 and 20,000 cp) to a nasal membrane. The viscosity of the composition is configured to allow spraying of the composition to a nasal membrane, while also facilitating maintaining the composition in contact with a nasal membrane for an extended period of time.

Seifert discloses a flexible tube applicator, including a flexible fluid containing vessel. With reference to the relative embodiments of Seifert, the applicator includes a swab 32/48 and a dispenser attached to the swab. The applicator is configured such that

the swab receives fluid from the dispenser only after the seal of the dispenser is broken. The swab forms part of the exterior of the dispenser and is not immersed in the fluid or encased by a portion of the assembly.

In contrast to the system of Seifert, Applicants' system includes an applicator assembly having an elongated stick and an applicator, wherein the applicator and the fluid are sealed within a container. The applicator and the fluid are exposed only after the seal of the container is broken.

Nothing in Seifert suggests "an enclosed second portion for encasing the applicator" or "a composition having a viscosity greater than about 1,500 centipoise enclosed adjacent the applicator" as set forth in claim 1 and claims 2-20 that depend therefrom; "a swab having an elongated stick and an applicator element at one end of the stick contained within the sleeve wherein the applicator holds a composition having a viscosity between about 1,500 centipoise and about 40,000 centipoise" as set forth in claim 21 and claims 22 and 24-34 that depend therefrom; or "providing an applicator having an elongated stick and a portion at one end of the stick contained within an elongated container having an enclosed first portion for holding the stick, and an enclosed second portion for holding the applicator, wherein the applicator holds a composition having a viscosity between about 1,500 to 40,000 centipoise" as set forth in claim 35.

Furthermore, nothing in Seifert suggests that it would be desirable to enclose the swab/applicator or suggests that encasing a fluid of a particular viscosity is desired for any reason. Combining Seifert with Davidson et al. does not cure this defect, since Davidson et al. also does not disclose a dispenser including and encased applicator/swab and fluid. Applicants therefore earnestly request reconsideration and withdrawal of this rejection to claims 1-7, 12-18, 21-30, and 35.

Claims 8-11, 19-20, and 31-34 stand rejected under 35 U.S.C. 103 as being unpatentable over Seifert in view of Davidson et al. and in further view of Haslwanter et al. (U.S. Patent No. 5,854,269). Applicants respectfully request reconsideration and withdrawal of this rejection.

As noted above, no combination of Seifert and Davidson et al. teaches or suggests Applicants invention as set forth in claims 1 and 21, from which claims 8-11, 19-20 and

31-34 respectfully depend. In particular, no combination of the references teaches or suggests "an enclosed second portion for encasing the applicator" or "a composition having a viscosity greater than about 1,500 centipoise enclosed adjacent the applicator" as set forth in claim 1 or "a swab having an elongated stick and an applicator element at one end of the stick contained within the sleeve wherein the applicator holds a composition having a viscosity between about 1,500 centipoise and about 40,000 centipoise" as set forth in claim 21.

The combination of Seifert and Davidson with Haslwanter et al. does not overcome this shortcoming, since Haslwanter et al. does not suggest any container that encloses an applicator. Applicants therefore submit that claims 8-11, 19-20, and 31-34 are patentable over the cited references.

Claims 1-7, 12-18, 21-30, and 35 stand rejected under 35 U.S.C. 103 as being unpatentable over Kortweg (EP 0357261) in view of Davidson et al. Applicants respectfully request reconsideration and withdrawal of this rejection.

Kortweg generally discloses a swab applicator unit, which includes a swab in a container. As the Examiner notes, nothing in the reference teaches or suggests that it would be desirable to encase a composition with the viscosity set forth in the pending claims.

As noted above, Davidson et al. discloses a viscous zinc composition, having a viscosity of about 2,500 cp to about 40,000 cp. The viscosity of the composition of Davidson et al. was selected to facilitate spraying a composition on nasal membrane. Since the system of the present invention does not include a spray mechanism, the viscosity range set forth in Davidson et al. does not render obvious the present invention, which includes an encased applicator.

This is not the case where Applicants are merely trying to claim a composition with a different viscosity range than that set forth in Davidson et al. Rather, the present application is directed toward a system and a method of using the system that includes a composition having a viscous liquid. Applicants submit that even if the composition set forth in Davidson et al. was exactly the same as that set forth in various elements of the claims, such would not render the invention obvious. But, this is not the case. The

specific viscosity ranges of the present invention are different from those set forth in Davidson et al., and are thus further patentable over the combination of references. Accordingly, Applicants respectfully request reconsideration and allowance of claims 1-7, 12-18, 21-30, and 35 over Korteweg (EP 0357261) in view of Davidson et al.

Claims 8-11, 19-20, and 31-34 stand rejected under 35 U.S.C. 103 as being unpatentable over Korteweg in view of Davidson et al., and further in view of Haslwanter et al. Applicants respectfully request reconsideration and withdrawal of this rejection.

As noted above, no combination of the cited references teaches or suggests a viscous composition, having the viscosity set forth in the claims, in combination with an encased applicator. Furthermore, there is no suggestion or motivation in any of the references, to modify the references or to combine references' teachings. Davidson et al. discloses a method of applying a zinc ion gel to a nasal membrane. The composition has a viscosity and carrier configured to maintain the zinc ions in contact with the nasal membrane for an extended period of time. In contrast, Haslwanter et al. discloses an aqueous composition including oxymetazoline to treat nasal congestion. Haslwanter does not teach or suggest applying the oxymetazoline via a viscous gel. Further, nothing in the Haslwanter suggests that maintaining a composition in contact with a nasal membrane for an extended period of time (as opposed to facilitating rapid delivery to the blood stream) has any benefit. Accordingly, there is no suggestion to combine Haslwanter with Davidson et al. Furthermore, as discussed above, nothing in Haslwanter suggests use of a composition using the system of Korteweg. Accordingly, reconsideration and withdrawal of this rejection to claims 8-11, 19-20, and 31-34 is earnestly solicited.

Double Patenting

Claims 1-11 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 29 of copending Application No. 10/663,010 in view of Seifert; claims 1-3, 5, 21-22, 28, and 30 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, and 5 of copending Application No. 11/163,876; and claims 1-7, 21-22, 24-25, 28-30, and 35 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 23-27, 29, 31-32, and 34 of copending Application No. 11/028,991 in view of Seifert. Applicants acknowledge the Examiner's assertion, but submit that no action is required at this time.

Conclusion

Applicants respectfully submit that all pending claims are patentable and therefore respectfully request allowance of all claims. Should the Examiner have any questions regarding this Amendment and Response, the Examiner is invited to call the undersigned at the number provided below.

Respectfully submitted,

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